

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

LEVI WHITE,

Plaintiff,

v.

CAPIO PARTNERS, LLC,

Defendant.

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Case No.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant, Capio Partners, LLC (“Capio”), by its attorney, hereby removes the above captioned civil action from the Magistrate Court of Richmond County, State of Georgia, to the United States District Court for the Southern District of Georgia, Augusta Division. In support of this Notice of Removal, Capio respectfully states as follows:

1. Capio is the only defendant in a civil action filed by plaintiff, Levi White (“plaintiff”), in the Magistrate Court of Richmond County, State of Georgia, captioned as *Levi White v. Capio Partners, LLC*, Case No. 118678 (hereinafter the “State Court Action”).

2. Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendant removes the State Court Action to this Court, which is the federal judicial district in which the State Court Action is pending.

3. The Complaint in the State Court Action (hereinafter the “State Court Action Complaint”) asserts claims under the federal Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, *et seq.*, and Georgia state law.

4. Removal of the State Court Action is proper under 28 U.S.C. § 1441. If the action had originally been brought in this Court, this Court would have original, federal question jurisdiction over plaintiff’s TCPA claims pursuant to 28 U.S.C. § 1331, as well as supplemental jurisdiction over the state law claims asserted.

5. Pursuant to 28 U.S.C. § 1446(b), Defendant has timely filed this Notice of Removal. To wit, Plaintiff attempted service of this complaint on Capio Partners, LLC, a company that was initially incorporated in Georgia, but which has been dissolved for several years. Moreover, Plaintiff attempted service of the complaint on a statutory agent at 2250 Satellite Boulevard, Duluth, Georgia 30097 who was not serving in that capacity at the time of attempted service. At the time of attempted service, Capio was, and is now, registered as a foreign entity, with a registered agent of CT Corporation System, located at 1201 Peachtree Street, NE,

Fulton, Atlanta, GA 30361. Representatives of Capio Partners received the lawsuit on July 13, 2015. Because Capio was not properly and formally served, the thirty-day time limit had not been triggered. Additionally, this Notice of Removal is being filed within 30 days from the date that Defendant actually received the Complaint. Consequently, this Notice is timely.

6. There are no co-defendants in this action.

7. Attached hereto as **Exhibit A** and incorporated by reference as part of this Notice of Removal is a true and correct copy of the Petition filed in the State Court Action. No further proceedings have taken place in the State Court Action.

8. A copy of this Notice of Removal is being served upon Plaintiff.

9. Written notice of this Notice of Removal of this action is being immediately filed with the Magistrate Court of Richmond County, State of Georgia. *See* **Exhibit B**.

10. The Magistrate Court of Richmond County, State of Georgia is located within the Southern District of Georgia, August Division. Therefore, venue for purposes of removal is proper because the United States District Court for the Southern District of Georgia embraces the place in which the removed action was pending. *See* 28 U.S.C. § 1441(a).

11. Removal of plaintiff's State Court Action is proper under 28 U.S.C. §§ 1441 and 1446.

WHEREFORE, Defendant, Capio Partners, LLC, hereby removes the State Court Action to this Honorable Court.

Respectfully submitted,

/s/ Wendi E. Fassbender

Wendi E. Fassbender, Esq.

GA Bar No. 179133

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Attorneys for Defendant,

Capio Partners, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 2015, a copy of the foregoing **Notice of Removal** was electronically filed with the Clerk of the Court, United States District Court for the Southern District of Georgia, August Division and served via U.S. Mail upon the following:

Levi White

2158 B Street

Augusta, GA 30904

Telephone: (706) 294-8822

Email: nazinga58@yahoo.com

/s/ Wendi E. Fassbender

Wendi E. Fassbender, Esq.